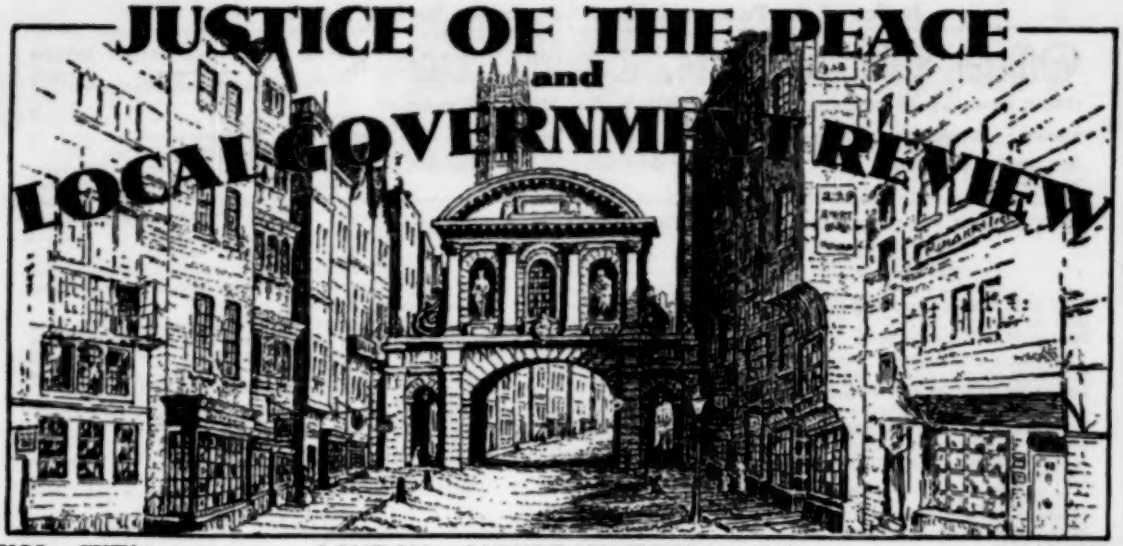

VOL. CXIV. LONDON: SATURDAY, JULY 15, 1950. No. 28

CONTENTS

REPORTS

Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

BOROUGH OF ROYAL LEAMINGTON SPA

Law Clerk

APPLICATIONS are invited for this appointment on Grade A.P.T. III of the National Scale (£450 to £495 per annum).

Applicants should possess sound practical knowledge of conveyancing, contracts, local land charges, and the general legal work of a local authority.

The post is superannuable and the appointment will be subject to a medical examination. A flat will be offered to the successful candidate.

Applications, giving full particulars of experience and qualifications, and the names of two referees, should be sent to me before July 19, 1950.

JAMES N. STOTHERT,
Town Clerk.

Town Hall,
Royal Leamington Spa.

THE WEAR AND TEES RIVER BOARD

APPLICATIONS are invited for the following appointments to the staff of the above Board, which has lately been established under the River Boards Act, 1948, and is responsible for land drainage works, the prevention of river pollution, fisheries and other duties under the Act.

(*a*) Clerk to the Board, who will be responsible as chief executive officer, for the co-ordination and supervision of the Board's activities. Salary within a range of £1,250 to £1,500 according to age, experience and qualifications. Applicants should preferably be barristers or admitted solicitors and previous service with a local government authority, catchment board, or fishery board will be an advantage.

(*b*) Chief Financial Officer, who will be responsible for the control of the finances of the Board and the supervision of its accounts, including the preparation and issue of precepts. Salary within a range of £1,000 to £1,250 according to age, experience and qualifications. Applicants must possess recognized professional qualifications and experience in the finance department of a local authority will be an advantage.

The above appointments which are to be filled shortly will be on a whole time basis and will be subject to the Local Government Superannuation Act, 1937.

Applications in writing stating (*a*) age, qualifications, experience and particulars of present employment, (*b*) when the applicant would be free to take up employment, and (*c*) the names and addresses of three referees should be made to the Acting Clerk to the Wear and Tees River Board: R. C. Pearce, Clarks Yard, High Row, Darlington, not later than July 24, 1950.

COUNTY BOROUGH OF EAST HAM

Town Clerk's Department

APPLICATIONS are invited for the appointment of a Senior Law Clerk. Experience with a local authority is desirable but not essential. Salary in accordance with Grade A.P.T. IV (£480 × £15—£525 plus London weighting).

Form of application (which must be delivered to me not later than 9 *a.m.* on July 24, 1950), together with the conditions of and the duties attached to the appointment may be obtained from the undersigned.

H. A. EDWARDS,
Town Clerk.

Town Hall,
East Ham, E.6.
July, 1950.

WINCHESTER RURAL DISTRICT COUNCIL

Deputy Clerk of the Council

APPLICATIONS are invited for the above post at a salary within the range of Grades 6, 7 and 8 of the N.J.C. Scales. The commencing salary will be fixed according to qualifications and experience but will not, in any event, be higher than £660 (A.P.T. 7).

Applicants must have a thorough knowledge of the duties attaching to such a post and in particular, have a sound knowledge of the law relating to water supplies and experience of the duties of a water undertaking.

Preference will be given to applicants possessing at least one of the qualifications adopted by the N.J.C. as applicable to a Clerk's Department.

The appointment will be subject to the provisions of the Local Government Superannuation Act, 1937, and will be determinable by one month's notice on either side.

Housing accommodation will, if necessary, be made available in due course to the successful applicant (if married).

Applications, stating age, qualifications and experience, present post and salary, together with the names of three referees, and endorsed "Deputy Clerk" to be delivered not later than August 12, 1950.

Canvassing will disqualify.

G. H. GARDNER,
Clerk of the Council.

45, Romsey Road,
Winchester.
July 14, 1950.

INQUIRIES

DETECTIVE AGENCY (HOYLAND'S) (T. E. Hoyland, **ex-Detective Sergeant**); Member of British Detectives Association and Federation of British Detectives. **Divorce, Process serving, Observations, Confidential investigations and Status inquiries anywhere. Male and Female staff. Over 150 Agents in various parts of the country.—1, Mayo Road, Bradford. Tel.: Bradford 26823 day or night. Telegrams: "Evidence" Bradford.**

RIVER TRENT CATCHMENT BOARD

Appointment of Assistant Solicitor

APPLICATIONS are invited from admitted solicitors for this appointment at a salary in accordance with Grade VIII of the National Scale—£685 to £760 per annum. The commencing salary on this scale will be fixed according to applicant's experience. Applicants must be particularly experienced in conveyancing.

The appointment will be subject to a calendar month's notice on either side and to the Local Government Superannuation Act, 1937.

Applications, containing information as to age, qualifications and experience, accompanied by copies of two testimonials, should be sent to the undersigned not later than Friday, July 21, 1950.

JOHN HIRST, Solicitor,
Clerk of the Board.

Catchment Board Office,
Derby Road, Nottingham.

COUNTY BOROUGH OF SOUTHAMPTON

Appointment of Legal Assistant to the Clerk to the Justices.

APPLICATIONS are invited from solicitors for the whole-time appointment of Legal Assistant to the Clerk to the Justices.

Applicants must have had extensive experience of magisterial law and practice and be capable of acting as Clerk of the Court without supervision. The successful candidate will be required to assist in a major degree in duties connected with Licensing Planning, the Juvenile Court and Probation Committee.

The salary scale for this appointment accords with Grade X of the National Scheme of Conditions of Service, namely, £850 rising by increments of £50 to £1,000 per annum, the commencing salary to be fixed within this scale having regard to previous experience and ability. The appointment, which will be terminable by three months' notice on either side will be subject to the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with copies of three recent testimonials, should be delivered to the Clerk to the Justices, Law Courts, Southampton, not later than Saturday, July 29, 1950, in envelopes endorsed "Legal Assistant."

ARTHUR J. ROGERS,
Clerk to the Justices.

Magistrates' Clerk's Office,
Law Courts,
Southampton.

SITUATIONS VACANT

WEST Country Solicitors in country town, require clerk male or female with general experience including Probate and Accounts. Previous experience as Managing Clerk not essential. Permanency. State age, experience and salary required. Box A17, office of this paper.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

VOL. CXIV. No. 28. Pages 394-409

LONDON : SATURDAY, JULY 15, 1950

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NOTES of the WEEK

The Law Society

The annual general meeting of the members of the Law Society was held at the Society's Hall on Friday, July 7. In moving the adoption of the annual report of the council for the year ended May 31, 1950, the president, Mr. Harold Nevil Smart, C.M.G., O.B.E., J.P., selected for special mention some of the items with which the report deals. One of these is the question of retirement benefits for professional men in private practice. It is urged that the present scales of taxation make it so difficult for such men adequately to provide for their future that many are driven into seeking salaried posts with pensions attached. This may lead, it is feared, to a real dearth of competent men in private practice, and it is suggested that a professional man in private practice should be allowed as deductions in computing his taxable income premiums paid out of earnings to secure a deferred annuity at, say sixty-five years of age, of an amount comparable, in relation to his earnings, with pensions provided by approved pensions schemes. The council welcome, therefore, the decision of the Chancellor of the Exchequer to set up a committee to inquire into the matter.

Considerable work has been done to prepare for the starting of the reduced legal aid scheme on October 1 next. Provisional area committees have been appointed under the Society's scheme, area secretaries have been recruited and trained, and have started on their work.

Also specially mentioned was the introduction of a procedure whereby the president presents formally to all newly admitted solicitors their admission parchments. This is done on an occasion when the new solicitors are invited to a tea party in the Hall and allowed to bring two guests, and provides an opportunity for newly admitted solicitors to meet the president and members of the council of their professional organization.

The last matter to which the president made special reference was the conference of the International Bar Association to be held in London from July 19 to 26, 1950. The Association is a federation of national Law Societies or Bar Associations. On this occasion, the third conference, the Law Society and the Bar Council are to be joint hosts to, it is anticipated, lawyers from thirty-eight different countries, and the president appealed to members to register for the conference and to play their part in helping to entertain the guests.

Cruelty and Insanity

Magistrates have in their work in courts for domestic proceedings to cope with many difficulties, not the least of which is the task of piecing together the effect of the various High Court decisions to which they must have regard. The latest of these is *Lissach* v. *Lissach* (*by his Guardian ad Litem*) [1950] 2 All E.R. 233. The wife left the child of the marriage, a girl aged six, in her husband's charge, and in her absence he strangled the child and attempted suicide. He stated that he did this because he had creeping paralysis and had passed it on to the child. Neither he nor the child in fact had that disease. He was tried for murder, and found guilty but insane. He was not incurably insane, and there was a possibility of his release from Broadmoor. The wife petitioned for divorce on the ground of cruelty.

Mr. Justice Pearce decided that the wife was entitled to succeed. He said there could be no greater cruelty to a woman than the killing of her child and, apart from the question of insanity, the wife had a clear right to a divorce. He said it was for the husband to establish that a legal defence of insanity exists in matrimonial cases, and added that although it had never been affirmatively held to exist in any reported case, it had been assumed to exist in some cases which had been cited. After discussing the matter at some length he held that the defence of insanity was not open to the husband. In case he was held to be wrong in so deciding, the learned judge went on to give his opinion as to whether, if such a defence is open, the necessary degree of insanity had been proved in this case. He discussed the effect of *Macnaghten's* case (1843) 10 Cl. and Fin. 200, and considered the evidence in the case before him. He continued: "I have to consider whether the husband has proved clearly that he did not know that it was wrong. I am satisfied that on the evidence he has not proved that clearly or at all . . . since the husband's conduct, even if his delusions had been true, would have been unlawful, he cannot escape liability for that conduct."

It is fortunate that the points at issue in this case will very rarely arise in cases coming for decision before justices.

Probation and Juvenile Court Work in Salford

For the city of Salford a report for 1949 has been issued which embodies a report from the probation committee and one from the juvenile court panel. The former rightly stresses that probation is a form of leniency which in proper cases can be shown to offenders who genuinely desire to mend their ways and are prepared, to that end, to co-operate with the probation officer. It should never be adopted by courts just as an easy way out and offenders should not be allowed to regard it *merely* as an escape from more serious consequences. An interesting table is included showing in each of sixty cases the original offence or cause for which a probation or supervision order was made, the number of months which passed before there was a re-appearance of the person concerned before the court, and the charge or cause which led to that re-appearance.

The report of the juvenile court panel refers to recent criticisms of juvenile courts, but points out that within the law these courts are often powerless to do the things which their critics suggest they should do. It points out that the conditions in

which many juveniles have to live is the root cause of many of the appearances before juvenile courts, and the fact that a large number of juveniles living in such bad conditions do not behave so as to necessitate their appearance before the courts is a matter for wonder and thankfulness and not for complacency.

Probation in the County Borough of Southampton

We have received the report of the probation committee for the year ending May 31, 1950. It is signed by the Mr. Claude Ashly as chairman, and we note with interest the connexion which he quite properly suggests exists between probation work as generally understood and another important part of a probation officer's work, *i.e.*, conciliation in matrimonial cases. If a home can be saved or re-made by successful conciliation children from that home may well be spared an appearance before a juvenile court. Some of the figures given in respect of the 118 juvenile probationers with which the committee were concerned during the year are worthy of mention. Dealing with the home back-ground it is noted that fifty-eight of the 118 came from what are described as normal homes or homes with fair material and emotional conditions. Of the 118, fifty-three were connected with a church, a youth organization or with both. These two figures of fifty-eight and fifty-three are both higher than one would perhaps have expected. On the educational side it is not surprising to find seventy-five of the 118 classed as below average or sub-normal. Other figures supplied from school reports are that seventy-four of the 118 were said to be truthful and honest and another forty-four honest but untruthful. There must, we think, be some mistake here because with the untruthful and dishonest, and truthful but dishonest added the total comes, not to 118, but to 158. Ninety-four of the 118 are said to be non-truant and ninety to enjoy good health. These figures, taken as a whole, do not seem to support some of the theories often put forward to explain juvenile delinquency.

Flying Police

At the Hague recently, police representatives from most countries of the world gathered to discuss crime problems from the international aspect. Modern means of transport and communication have destroyed the parochial sphere of criminal activity. It is easier now for an offender to travel to the continent by air, than to move from one end of our island to the other by land transport. Commercial air lines supply aircraft day and night and this enables criminals, travelling under the guise of tourists or on business, to move freely and speedily between countries. They acknowledge neither frontiers nor laws and thus secure advantages over the police whose powers and functions are restricted.

One of the resolutions of the conference has been the formation of a committee to develop a co-ordinated police force of the air. Mr. R. M. Howe, M.C., assistant commissioner of the Metropolitan police, who represents this country at the meeting, has been elected chairman of this special committee. An international flying squad raises questions of international law, extradition proceedings and a host of other difficulties which have never before been encountered, or even anticipated. Summary courts sit in the vicinity of race meetings now ; shall we one day witness the unusual spectacle of a court of justice established and functioning in the air ?

Residential Nurseries

A memorandum has been issued by the Home Office for the guidance of local authorities on the provision and conduct of residential nurseries. The recommendations in the memorandum are based on advice tendered to the Home Secretary by the Advisory Council on Child Care appointed under the Children Act, 1948.

The memorandum suggests that residential nursery accommodation should be limited to providing for three categories of young children :

(*a*) Those under two admitted for assessment, *i.e.*, coming into care indefinitely, or coming into care temporarily and suffering from any physical or mental defect.

(*b*) Those under five who come into care indefinitely and who cannot be boarded out or placed into a small family group.

(*c*) Those under five who come into care temporarily and cannot be boarded out or possibly placed with other children of the same family in a short stay children's home.

The memorandum deals with the questions of age range, size of nursery, standards of accommodation, safety precautions, medical arrangements, diet, staffing, arrangements on admission, assessment, equipment, education of the children and their general development, and their placing out from the nursery.

It is stated that a good nursery should develop in the children a sense of security, and that frequent changes of staff mitigate against this. It is recommended, therefore, that although the nurseries must be used to train students the rates of students to staff (excluding domestic staff) should not exceed two to one, and that in any event each child should be the responsiblity of a member of the staff to whom he can always turn.

We cannot, of course, go into more detail as to the recommendations in the memorandum. It is issued, accompanied by a Home Office letter, to all councils of counties and county boroughs in England and Wales, and additional copies can be obtained from the Home Office Publications Department, Room 5, Horseferry House, Dean Ryle Street, S.W.1.

Authorized Traffic Signs

Road users have to be alert to notice not only other persons, as well as animals and vehicles on the road, to say nothing of sundry obstructions which appear from time to time, but also all kinds of authorized traffic signs which may be erected to regulate their progress. The Traffic Signs (Size, Colour and Type) Regulations, 1950, came into operation on June 14, 1950. It is impossible to attempt to summarize them. They replace the provisional regulations made in 1933 which have survived in their provisional state for seventeen years. It is somewhat startling to realize that diagrams illustrating possible forms of traffic signs which may be met with occupy from pages 9 to 54 inclusive of the regulations, and many of these pages contain three or more examples. One effect of the multiplicity of signs and their accompanying specifications is probably that no motorist will be sufficiently enthusiastic to try to ascertain whether any particular sign conforms strictly to type ; the signs will be taken at their face value. We hope for the sake of magistrates and the staffs of their courts that this will be so, and that endless time will not be spent in deciding questions of odd half inches that really do not matter for practical purposes. There is no doubt of the benefit to be obtained from the uniformity of signs which it has long been the object of the authorities to secure, and we imagine (we must confess that we have not made detailed comparisons) that the new regulations make little if any change in the signs to which we have all grown accustomed.

Coming into operation with the regulations are " The Traffic Signs (General) Directions, 1950 " and " The Traffic Signs (London) (Revocation) Authorization and Directions, 1950." The signs formerly dealt with by 1948 (London) Directions are now covered by the new 1950 regulations, so the 1948 (London) Directions are revoked. By the 1950 (General) Directions all former directions, general or special, given by the Minister of

Transport under s. 48 (1) of the Road Traffic Act, 1930, are revoked, and the new directions are those to which a highway authority must have regard in placing on or near roads in its traffic area signs of the prescribed size, colour and type.

A Car Case and Car Insurance

From correspondents there have come to us extracts from several newspapers, relating to a Mr. Goodall, an ex-naval petty officer who had established himself at Woking in the car hire business, and lost his driving licence on conviction before the Woking magistrates. As so often with popular reporting of legal proceedings, the newspaper cuttings are almost unintelligible because they do not tell their readers what was the charge. The action which brought him into court was giving a free ride to his wife. It was said that he had driven a customer to Kingston-on-Thames in the ordinary way. He remembered that it was their wedding anniversary; telephoned to his wife to come along by train and took her to a Kingston theatre, after which he drove her home to Woking. Very proper in itself, but the car was stopped by a constable; appearance before the magistrates, conviction, and disqualification for twelve months were the lamentable sequel. It is not to be wondered at that the paragraphists found a pathetic story to lay before the public, and that even among our own more sophisticated readers there should have been some to wonder whether justice has been over blind. The slovenly habit of the press (and public) of calling every hired motor a "taxi," seemed at first to suggest that Mr. Goodall's vehicle was a hackney carriage, and that his conviction had been under the law relating to hackney carriages. On the other hand, statements that the "licence was taken away for a year," and that the "magistrates disqualified him for driving for a year" showed, if either was correct, that the conviction had nothing to do with the Town Police Clauses Act, 1847. That Act contains nothing to prevent a cabman from giving a free ride, and, for the offences it does create, it gives no power to take away a licence except under s. 50, which gives the power to the local authority, not to the magistrates. It seems doubtful, on the newspaper statements, whether the so-called "owner driver taxi" was a hackney carriage within the Act at all. No doubt it was a "hackney carriage" in the revenue sense—s. 3 (1) (*b*) of the Vehicles (Excise) Act, 1949, taking the place of provisions in s. 13 of the Finance Act, 1920, as afterwards heavily amended. The clue, undiscoverable from several newspapers, is to be found in one which says that Goodall "used his car for pleasure when it was insured only for hackney carriage work. The car was not taxed for pleasure riding either."

The point of the latter part of the statement just quoted is that s. 13 of the Vehicles (Excise) Act, 1949, replacing s. 14 of the Finance Act, 1922, imposes an excise penalty upon a person who uses a hackney carriage (in the revenue sense) for a purpose other than that to which the rate of duty is appropriate, but here again there is no provision for taking away a licence. One of our correspondents ingeniously conjectured "red petrol," the conviction having been while petrol rationing was still in force, but this is in itself unlikely, since the newspapers made no mention of it, and concentrated upon the "human" aspect, of punishing a man for giving a ride to his wife. No doubt, there could have been a less heinous petrol offence: for instance, the Motor Fuel (Control) Order, 1948, S.I. 1948, No. 1125, made it an offence to use otherwise than for *bona fide* public hire petrol issued for cabs or for hackney carriages in the revenue sense of the term. This however did not involve the penalty of losing the offender's licence. The penalties depended upon the Defence Regulations, and even they do not impose this.

By a process of exhaustion, therefore, coming back to the first sentence of the newspaper statement quoted above, it becomes clear that the conviction was under s. 35 of the Road Traffic Act, 1930, for using a vehicle on a road without having a policy of insurance which covered the particular use. His policy covered him only while the car was used for hire. In the circumstances, the ordinary reader might well think, as our own correspondents evidently thought, that twelve months' disqualification from the holding of a driving licence was an unduly heavy penalty. The man had left the Navy with a disability which barred him from many types of employment; he had sunk his gratuity and savings in buying a car which was his means of livelihood; taking his wife to the theatre and driving her home was a natural, nay commendable, attention to pay her on their wedding anniversary. Yet these were evidently not "special circumstances" entitling the magistrates to relieve him from disqualification under s. 35 of the Act of 1930, as interpreted in the cases given in *Stone's* note upon the section. Nor is the law an ass in this case. Candour compels the reflection that, if on the homeward drive Goodall had run into a cyclist (for example) and crippled him for life, Goodall's whole worldly belongings might not have been enough to compensate him, so that the very circumstance would have arisen which caused Parliament to seek means of safeguarding the victim by means of Goodall's insurance. There is a sort of parallel with those cases where sympathy with a criminal may tend towards lack of sympathy for the victim of his crime. The true solution seems to be to get rid of limited insurances. The object of s. 35 of the Act of 1930 is to protect the person injured by a motor car. Its underlying reason is that the driver or owner of the car has often not enough resources to make good the loss which has been caused. It ought not to be possible for the object of the section to be defeated, by showing that the driver was at the time committing an offence under s. 35, by using the car in a manner not covered by the policy. The object has, in truth, been largely secured as between the victim of the car and the insurance companies and Lloyd's, by the establishment of the Motor Insurance Bureau, a full account of which is to be found in the illuminating Chapter VI of *Shawcross on the Law of Motor Insurance* (Butterworth, 1949). The scheme set up, by agreement between the Government and the companies and Lloyds, was designed to relieve the victim of the hypothetical accident we have postulated from the consequences of being injured by a vehicle not at the moment adequately insured: for purposes of that scheme, he would receive the same compensation from insurance sources as if there had been a full policy. So far, so good. The effect of the scheme upon criminal liability under s. 35 of the Act of 1930 has not yet, it seems, been judicially considered. *Shawcross, loc. cit.*, suggests it might go in mitigation of penalty, but the rigid statutory penalty leaves not much scope for mitigation, while, on the other hand, at p. 244 it is mentioned that the Cassel Committee, which worked out the scheme, considered that a heavy penalty ought to be retained against persons whose conduct throws on the funds made available under the scheme a greater risk than that for which a premium has been paid. We ourselves are interested from two sides: in common with the legislature which passed the Act of 1930, we wish Juggernaut's innocent victims to be fully compensated, and from our own special, magisterial, point of view we dislike seeing persons punished with loss of livelihood for an offence which, in cases like Goodall's, has no such element of moral culpability as (for instance) use of red petrol in a private car, to take another offence for which twelve month's disqualification was the penalty. The only way out seems to be for all insurances to give full cover and be at rates of premium determined by physical facts, not by the intentions of the owner of the car.

ENDORSEMENTS AND DISQUALIFICATIONS UNDER THE ROAD TRAFFIC ACTS

We have had from readers a number of questions which suggest that the law as to endorsements and disqualifications, particularly as affected by the provisions of the Criminal Justice Act, 1948, is not always easy to ascertain and we have been asked to publish an article dealing with the matter.

The general power of courts as to these matters is given by s. 6 of the Road Traffic Act, 1930, which deals with disqualifications and endorsements under different headings. If a person is convicted of a criminal offence in connexion with the driving of a motor vehicle other than an offence under Part IV of that Act (which relates to public service vehicles and licences for heavy goods vehicle drivers) the court may order him to be disqualified for holding or obtaining a driving licence for such period as the court thinks fit. The period so fixed must be a definite one (*R.* v. *Fowler* [1937] 2 All E.R. 380; 101 J.P. 244). There have been various decisions as to what constitutes a criminal offence in connexion with the driving of a motor vehicle, it having been held that to cause obstruction under the Highway Act or the Motor Vehicle (Construction and Use) Regulations is not such an offence. It is particularly to be noted that by s. 11 (4) of the 1930 Act the offence of aiding and abetting an offence under that section, where the aider and abettor is proved to have been present in the vehicle when that offence was committed, is to be deemed to be an offence in connexion with the driving of a motor vehicle. The inference to be drawn from this appears to be that the aiding and abetting of any other offence is not to be so deemed. This seems to be in conflict with the general principle that an aider and abettor on conviction is liable to the same pains and penalties as a principal.

This general power of a court to disqualify is modified by certain other provisions. Three sections of the Road Traffic Act, 1930 (ss. 13, 15 and 35) enact that on conviction of an offence under them the offender "shall, unless the court for special reasons thinks fit to order otherwise, and without prejudice to the power of the court to order a longer period of disqualification be disqualified for a period of twelve months from the date of the conviction for holding or obtaining a licence." This provision has led to a series of decisions as to what constitutes special reasons which entitle a court to order otherwise. Two general principles emerge from these. The first is that whether the facts found by the court amount to a special reason is a matter of law, and the second is that a special reason is one special to the facts of the case and not a circumstance peculiar to the offender. We have dealt with this particular matter on a number of occasions and do not propose to enlarge on it here.

Other modifications of the general power to disqualify are contained in ss. 12 and 10 (2) of the 1930 Act. By s. 12 on a first conviction of an offence under that section the disqualification must not exceed one month and on a second it must not exceed three months. A conviction under s. 11 which occurred within three years before a conviction under s. 12 is to be treated for this purpose as a conviction under s. 12 (*see* s. 12 (2) and proviso). By s. 10 (2) a first or second conviction of driving a motor vehicle at a speed in excess of a legal limit is not to render the person convicted liable to be disqualified.

Section 11 (3) contains yet another provision affecting the general power to disqualify. It enacts that on a second or subsequent conviction of a person under that section the court *is* to order him to be disqualified (no period is specified, so the court has a complete discretion) *unless* having regard to the lapse of time since the last conviction or for any other special reason it thinks fit to order otherwise. It is expressly stated that this provision does not affect the right of a court, if it thinks fit, to order disqualification on a first conviction under s. 11.

By s. 6 a disqualification imposed under that section may be limited to the driving of a motor vehicle of the same class or description as the vehicle in relation to which the offence was committed. The High Court held recently, in *Burrows* v. *Hall* [1950] 2 All E.R. 156, that a disqualification by conviction under s. 35 (2) of the 1930 Act may be so limited.

It will be seen from the foregoing that there are three different sets of circumstances in which disqualification may follow conviction for an offence :—

1. When the court in its discretion decides that disqualification should follow.
2. When the court is required to order disqualification unless it finds special reason not to.
3. When on conviction disqualification follows (seemingly without an order of the court) unless the court for special reasons thinks fit to order otherwise.

It was our view that a disqualification which came under heading 3 was imposed by virtue of the particular section (ss. 13, 15 or 35) which directs that disqualification shall follow conviction, but it appears to us that the implication from *Burrows* v. *Hall* (*supra*) must be that such a disqualification is one imposed under s. 6, because the power to limit a disqualification to the particular type of vehicle is limited in terms to "any disqualification imposed under this section" (*i.e.*, s. 6).

Where a person is disqualified any licence which he then holds is suspended so long as the disqualification continues (s. 7 (1), 1930 Act). Section 7 (3) authorizes a person who is disqualified to apply at any time after the expiration of six months from the date of the disqualification for the removal of the disqualification. The application must be made to the convicting or disqualifying court. Pausing here, it may be noted that this subsection again draws a clear distinction between a person who is disqualified by virtue of a conviction and one who is disqualified by order. On the hearing of such an application the court has a wider discretion than it has when considering, at the time of conviction, whether special reasons exist to justify making an order that the statutory disqualification shall not follow conviction under ss. 13, 15 or 35. The matters to be considered are the character of the person disqualified, his conduct subsequent to the conviction or order, the nature of the offence and any other circumstances of the case. With these matters in mind the court may, if it thinks proper, remove the disqualification from such date as may be specified, or may refuse the application. An application which is refused may be renewed after a further period of three months or later. So far as we are aware the High Court has not so far been called upon to decide within what limits a court can exercise its discretion under s. 7 (3).

One other form of disqualification remains to be dealt with, and it is one which courts do not impose as frequently as they usefully might do. By s. 6 (3) of the Road Traffic Act, 1934, the court which convicts a person of an offence under s. 11 or under s. 12 of the 1930 Act may make an order under s. 6 of the 1930 Act disqualifying him for holding or obtaining a driving licence until he has, *on a date subsequent to the conviction*, passed a test of competence to drive. For the purpose of enabling him to try to pass such a test a person so disqualified may be granted a provisional licence (1930 Act, s. 5 (3) and 1934 Act, s. 6 (2)).

Endorsement of a driving licence with particulars of the conviction is something which (1) is in the discretion of the court to order in any case in which a person is convicted of a criminal offence in connexion with the driving of a motor vehicle (not being an offence under Part IV of the 1930 Act), which (2) must be ordered in any case where disqualification follows conviction or is ordered by the court, and which (3) must also be ordered in the case of conviction for an offence under s. 11 of the 1930 Act (*see* s. 11 (2)) and which (4) must similarly be ordered (by s. 5 of the 1934 Act) when a person is convicted of exceeding a speed limit or of an offence under s. 12 of the 1930 Act, unless the court for any special reason thinks fit to order otherwise. Where there is a disqualification the details of that must also be given in the endorsement.

Where a licence is ordered to be endorsed the clerk of the convicting court must send notice of the conviction and order to the licensing authority which issued the licence and to that of the area where the offender resides. If there is a disqualification the clerk must retain the offender's licence and forward it to the issuing authority (1930 Act, s. 8 (6)). Where on an application under s. 7 (3) of the 1930 Act a disqualification is ordered to be removed the court has to endorse on the licence particulars of the order of removal. By rule 52a of the Summary Jurisdiction Rules, 1915 (inserted by S.J. Rules, 1932, No. 8), the court must send notice of the order of removal and a copy of the particulars endorsed on the licence to the council to whom notice of the original disqualification was sent. Since that authority holds the licence during the period of disqualification it must be returned by them to the court so that particulars of the order of removal can be endorsed on it.

There are various provisions for ensuring that licences shall be produced to a court in order that any necessary endorsements may be made. By s. 33 (3) of the 1934 Act a person who is prosecuted for exceeding a speed limit, or for an offence under ss. 11, 12 or 15 of the 1930 Act, and who is at the time of the offence the holder of a licence, shall cause the licence to be delivered to the clerk of the court not later than the day before the hearing or shall send it by registered post to the clerk so that it ordinarily would reach him not later than that day, or shall have it with him at the hearing. If he is convicted the court may require the licence to be produced to it. It is an offence to fail to produce a licence pursuant to such a requirement, and the licence is suspended from the time of the requirement until it is produced to the court (s. 33 (4)). In cases to which s. 33 (3) and (4) do not apply we must look to s. 8 of the 1930 Act. By s. 8 (2) an offender whose licence has been ordered to be endorsed must, if so required by the court, produce the licence within five days or such longer time as the court may fix. If he is not at the time the holder of a licence but subsequently obtains one he must produce it for endorsement within five days after obtaining it. Again it is an offence to fail to produce a licence when required so to do, and the licence is suspended from the time at which it should have been produced until it is in fact produced.

We are not purporting to deal here with applications for licences and the various offences which can be committed in failing to disclose orders of endorsement and so on. Nor are we considering the duties of licensing authorities as affected by orders of endorsement and disqualification.

In conclusion we must deal with the effect on the provisions as to endorsements and disqualifications of the sections of the Criminal Justice Act, 1948, which deal with probation and conditional or absolute discharge. By ss. 3 and 7 of this Act a court must convict an offender before making a probation order or an order of conditional or absolute discharge. If these sections stood alone then a person in respect of whom any such order was made would be liable in appropriate cases to disqualification and/or endorsement of his licence in exactly the same way as any other convicted person. By s. 12 (1) of the 1948 Act a conviction of a person dealt with by virtue of the provisions of ss. 3 or 7, is to be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender in consequence of a breach of a requirement of a probation order or a further offence during probation or conditional discharge. Except in the case of an offender who was under seventeen when convicted, if the convicted person is subsequently sentenced (following a breach or fresh offence as aforesaid) for the original offence the provisions of s. 12 (1) no longer apply. In our view s. 12 (1) does not affect the questions of disqualification and endorsement we are considering, because disqualification and endorsement are purposes of the proceedings in which the order is made.

But by s. 12 (2) a conviction dealt with by probation or by conditional or absolute discharge is *in any event* to be disregarded for the purposes of any enactment which imposes or authorizes or requires the imposition of any disqualification or disability upon convicted persons. It is clear, therefore, that if probation or conditional or absolute discharge follows a conviction there can be no disqualification of the offender either by virtue of the conviction or by virtue of an order of the convicting court. We do not think, however, that the endorsement of a driving licence is a disability within the meaning of s. 12 (2), and it is certainly not a disqualification. The position as to endorsements, therefore, is unaffected by s. 12 (2), and a court has the same powers and duties in this respect in the case of an offender who after conviction is dealt with by probation or conditional or absolute discharge as in any other case. This means that even in a case where by virtue of s. 12 (2) of the 1948 Act no disqualification follows conviction the court can, if it thinks fit, order endorsement of an offender's licence. We think it right to point out before leaving the subject of s. 12 (2), that in our view it is improper for a court to make an order of probation or conditional or absolute discharge, in a case in which it would not otherwise do so, merely to avoid the offender's disqualification. If the court can properly find special reasons for ordering that there shall be no disqualification under ss. 13, 15 or 35 of the 1930 Act that is a correct course to take but we do not think it is proper to use probation or discharge because no special reason can be found.

This article would not be complete without a reference to the right of appeal given by s. 6 (2) of the 1930 Act. Any person *who by virtue of an order of a court* under this part of this Act is disqualified for holding or obtaining a licence may appeal against the order in the same manner as against a conviction, and the court may, if it thinks fit, pending the appeal, suspend the operation of the order.

We have always considered that s. 6 (2) has no application to a disqualification by conviction, and we do not think that *Burrows* v. *Hall* (*supra*) touches this point. It is to be noted, in this connexion, that s. 35 (2) which is referred to in that case, says that a person disqualified by virtue of a conviction under this section or of an order made thereunder for holding or obtaining a licence shall, for the purposes of Part I of this Act, be deemed to be disqualified *by virtue of a conviction* under the provisions of that Part. As we have pointed out earlier in this article Part I distinguishes in more than one place between a disqualification by order and one by conviction. In the absence, therefore, of any direct authority to the contrary, we are still of opinion that the right of appeal does not arise in the case of a disqualification by conviction.

CHIEF CONSTABLES' ANNUAL REPORTS, 1949

(*Continued from p. 348 ante*)

No. 28. ISLAND OF GUERNSEY

The population of the Island is 44,400 and the area 18,246 acres. The authorized strength is fifty-five and there are seven vacancies. In addition eight civilians are engaged at headquarters as typists, a cleaner, road painter and traffic examiner. The average age of the force is thirty-two years and height five feet ten inches; the average length of service is six years. Days lost through sickness numbered 267 compared with 172 the year before; the most common ailments being influenza and stomach complaints. During the year eight probationer constables attended number six District Training School at Sandgate in Kent.

Indictable offences reported to the police totalled 553; after initial investigation 162 were found not to be crimes. In 1948 615 crimes were reported and 160 finally marked off as disclosing no offence to have been committed. The percentage detected during 1949 was sixty-one. Property stolen amounted to £3,043 and recovered £1,834; in 1948 stolen goods were valued at £2,690 and recovered £1,126. Thirty-nine juveniles were prosecuted for fifty-four crimes; in the year before thirty-six juveniles were dealt with in respect of fifty-six indictable offences.

Licensed premises number 138 and there are eleven clubs. Visits of inspection were made by the police on 305 occasions. Two licensees were prosecuted for selling intoxicants during non-permitted hours; twenty-five persons were convicted of consuming liquor at the same time. Two licensees were cautioned for minor breaches of the liquor laws. One licence was revoked by the Royal Court; it is interesting to note that this is the first occasion for many years that a revocation has been made by the Royal Court. Twenty persons were convicted of drunkenness, an increase of three over the year before; in addition sixteen persons were convicted of driving motor vehicles whilst under the influence of drink, an increase of six. Three men were placed on the black list.

There were 749 road accidents which resulted in eight deaths and 256 persons injured; in 1948, six were killed and 228 injured. Nine hundred and forty-two people passed the driving test and eighty-three failed to qualify.

The special constabulary section is thirty-nine strong; they performed altogether 5,485 hours of duty during the year and rendered valuable support to the regular force on the occasions of football matches, races and similar public gatherings.

The Island of Alderney was policed by the Guernsey force from January 1, 1949; there is one resident officer and extra police personnel are sent as required. There has been little crime so far and of a minor character. There are ten licensed houses.

29. SOUTH SHIELDS

The population of the county borough is 108,360 and the area 4,420 acres. Authorized establishment is 154 and the force is eleven under strength. Civilians engaged number thirteen and consist of shorthand-typists, telephone operators, cleaners and a motor mechanic. Variations which have taken place during the year are: two transfers to other forces, five men retired on pension and seven who left to take up other employment. Applicants numbered 113 male and five female; the quota allocated to the force was twenty-nine men and two women and altogether seventeen men and two women were appointed on probation. The average age is thirty-four years, height five feet eleven inches and average length of service ten years. There are now 131 ex-members on the pension list. The total net cost chargeable to rates and grants was £92,800.

Indictable offences totalled 1,035, and 285 males and seventeen females were dealt with by the courts for crime. Stolen property was valued at £6,838 of which £1,255 worth was recovered. The percentage of detections was fifty-two. Juveniles prosecuted numbered 155, five less than in 1948.

On the question of housing the report reads: "In my last report I commented on the necessity of providing accommodation for new entrants, and I am pleased to say that through the council's support, with few exceptions, houses have been available as required."

In the 157 road accidents six persons were killed and 166 injured, a decrease of four fatalities and an increase of five injured people compared with the year before.

There are 212 premises licensed to sell intoxicants and twenty-seven registered clubs. The police made visits of inspection in 10,496 cases to public houses. Prosecutions for drunkenness were, 148 males and six females; there were seven convictions for being drunk in charge of motor vehicles and three defendants sent for trial on these charges.

The actual strength of the special constabulary was 150 and thirty-four recruits were accepted during the year; all are equipped with uniforms.

30. CAMBRIDGE

The population is 86,000 and the area 10,060 acres. The authorized strength of the force is 129 and there are seven vacancies including two policewomen. Two constables retired on pension, four resigned and one constable transferred to another force. Eight men and one woman were appointed during the year. Days lost through sickness totalled 1,057 which is greater by 318 than in 1948. Civilian staff number ten and they are engaged in clerical duties, accident prevention, cleaning, a matron and a motor mechanic.

Indictable offences numbered 748, a decrease of 286 compared with 1948; fifty-six *per cent.* were detected. Juveniles dealt with for crimes totalled fifty-four, an increase of three.

Road accidents totalled 1,197, an increase of 104; fourteen people were killed, seven more than the year before, and 446 injured.

The number of licensed houses and clubs is 285 (clubs number 51). Nine persons, including two women, were charged with drunkenness; only one case of drinking methylated spirits came to notice; last year there were six.

The strength of the special constabulary is ninety. "They are an efficient body of men and their value to the regular force cannot be over-estimated," adds the report.

31. DERBY

The population of the county borough is 142,520 and the area 8,116 acres. Authorized strength of the force is 218 and the actual number engaged is 215. During the year three men retired on pension and ten constables and three women constables resigned. Twenty-five men and three women were appointed, three constables were transferred from other forces, and four men who had previously served were re-appointed. Sickness accounted for 3,038 days, compared with 1,916 days in 1948. "Prior to the National Insurance Act, 1946, a man reporting sick was compelled to see the police surgeon and if

the sickness was not of a serious nature the man would probably resume duty after about three days, whereas now he is given a certificate to cover a period of seven days, and if he is not seriously ill, he does not visit his doctor until the seven days have expired, even though he may be quite fit to work. The housing problem has not improved during the year. On January 1, 1949, sixteen members of the force needed accommodation; this position has now increased to nineteen."

Crimes reported to the police totalled 1,231; the figures for the years 1946, 1947 and 1948 were: 1,032; 1,150; 1,253. Sixty-three *per cent.* were detected during 1949. Property stolen was valued at £12,036; in 1948 it was £14,536; that recovered amounted to £2,285 and £3,381 the year before. There were 364 people dealt with for crime during the year.

During 1949 sixteen people were killed and 422 injured in street accidents; in addition there were 747 accidents not involving injuries.

There are 365 licensed houses in Derby and eighty-one registered clubs with a membership of 50,268. Proceedings for drunkenness numbered 168, an increase of six compared with the year before. Proceedings were taken against one licensee and three other persons for offences related to licensing.

The present strength of the Special Constabulary is ninety-seven.

(To be continued)

LOCAL GOVERNMENT SUPERANNUATION

It is the duty of good employers to provide for the welfare of their employees, and a considerable part of this duty is discharged when provision is made for adequate superannuation. There are, however, differing views as to the kind of superannuation which can properly be described as "adequate."

In the local government sphere the many changes in superannuation provisions in the last few years have focussed a considerable amount of attention on this subject. The transfer of large numbers of local government employees to the civil service and to the new boards set up under recent legislation, and the altered pension rights offered to them, have caused many of their colleagues remaining in the service of the local authorities to reconsider, and to examine somewhat critically, the provision made for themselves under the Local Government Superannuation Act, 1937.

The regulations made by the Minister of Health under the Superannuation (Miscellaneous Provisions) Act, 1948, and the clear intention of that Act to encourage transfer of staff between local authorities, public boards, and the various forms of civil service, without loss of service for superannuation purposes, have given impetus to this reconsideration and criticism.

Most of all, the superannuation scheme applicable to officers in the Health Services now codified in the National Health Service (Superannuation) Regulations, 1950 (S.I. 497/50) has engaged attention, applying as it does not merely to officers who have transferred to other employment such as that under the Regional Hospital Boards, but also to certain employees who have remained in the service of the local authority and who still come within the scope of the fund set up under the 1937 Act. At their option these officers may have the new benefits provided in respect of the health services' employees without any transfer of employer, conditions of service, or headquarters.

The widening of the basis of national insurance by the National Insurance Act, 1946, the duplication (to some extent) of pension provision consequently arising and the option offered to existing officers by the National Insurance (Modification of Superannuation Schemes) Regulations, 1947, of receiving two pensions in old age or of eliminating the duplication and reducing the present contributions payable under the 1937 Act, have undoubtedly been the source of further thought.

Whilst it seems that comparatively few local government officers have exercised the rights to reduce their 1937 Act contributions, the duplicate provisions for security in old age have apparently suggested that some reduction in the pension payable under the 1937 Act upon retirement might well be accepted, and indeed be desirable in exchange for some other form of benefit, so that benefits may be on a broader basis without the cost to the Superannuation Fund (and presumably the size of the officers' contributions) being increased.

What then are the chief amendments which employees desire should be made in the existing pension provisions of the 1937 Act? Generally speaking, an analogy seems to have been drawn with the Health Services Superannuation Scheme and to have resulted in a wish for similar benefits.

If the views expressed at the annual conference of the National Association of Local Government Officers are taken as a guide, the amendment most strongly desired appears to be improvement of the provision made for widows. At present the only provision in the 1937 Act is that contained in s. 9 whereby a contributory employee can surrender a part of his pension in order to provide a pension for his spouse should he pre-decease her. This option, however, can only be exercised when the employee is about to retire (other than by reason of ill-health). It is now suggested in several quarters that the scheme should provide pensions for widows of local government officers comparable with those provided in the Health Service Scheme, or, alternatively, that the right to allocate a portion of pension for the benefit of his spouse should be exercisable upon the employee having qualified by reason of service, etc., for a pension without the necessity of actual retirement. A similar desire apparently has inspired civil servants who, by virtue of the Superannuation Act, 1949, have now obtained for themselves a separate scheme whereby in return for a contribution equivalent to 1½ *per cent.* of salary, provision is made for the payments of pensions to widows, children, and certain dependent relatives, provided that the deceased had completed a reasonably short period of service.

From the evidence available it appears that the other benefits provided by the Health Service Scheme are less attractive to local government officers. Broadly speaking, these are:—

(1) Lump sum retiring allowances payable to officers who have attained the age of sixty and have completed five years' service, or who have completed ten years' service and are permanently incapacitated by ill-health or infirmity. The amount payable is based upon the number of years' service and the average annual remuneration of the three years immediately before retirement.

Provision for lump sum retiring allowances is also contained in the Teachers' Pension Scheme.

(2) Short service gratuities in respect of persons who have completed five but less than ten years' service, and are permanently incapacitated by ill-health or infirmity. The effect of this is to ensure that such a person receives (either by way of gratuity or of lump sum retiring allowance) a

sum not less than the amount of his average annual remuneration.

(3) Death gratuities assuring a certain minimum payment to the estate of a deceased officer who has completed five years' service.

(4) Injury allowances payable to an employee permanently incapacitated by an injury sustained in the actual discharge of his duties. The amount is not fixed but is at the discretion of the Minister subject to a maximum of two-thirds of average remuneration.

It may be observed that the first three of these benefits are available to the contributory employees of the West Riding County Council (if they so wish) by virtue of the West Riding County Council (General Powers) Act, 1948.

Other provisions which may be considered and some of which have, in fact, been suggested at various times include the following :—

(1) Should the average remuneration be calculated by reference to a period of less than five years?

(2) Should title to a pension accrue at age fifty-eight with forty years' service, or alternatively, should superannuable service not commence until the twentieth birthday? (With the present-day liability of young men to military service, the latter suggestion may be preferable.)

(3) Should the earlier age of retirement apply to all female employees and not merely to female nurses, midwives and health visitors?

(4) Should interest be payable together with contributions refunded upon voluntary resignation, as is the case under the National Health Service Scheme?

(5) Should the title to allocate a part of pension for the benefit of a spouse be extended to cover other dependants? Teachers and unmarried employees in the Health Service have this privilege.

(6) Where an employee who is in a position to retire with a pension continues to serve for a further period, should the pension ultimately payable to him be increased? A provision similar to this may be found in the National Insurance Act, 1946, with regard to retirement pensions of persons who do not retire at age sixty-five (or sixty in the case of females).

It is evident that any additional benefit which is not counterbalanced by a reduction in existing benefits must increase the cost of pensions. This would manifest itself very clearly in the case of the funded 1937 Act Schemes but would not be so evident in the case of unfunded schemes. By whom should the cost of any increased benefits be borne?

The Departmental Committee on the Superannuation of Persons employed by Local Authorities in England and Wales (1919) came to the conclusion that the cost should be shared equally between the officers and the local authorities, and it is interesting to note that although the civil service scheme is a non-contributory one, that is, the officers are not required to make any contribution towards their superannuation benefits, the recent extension of those benefits to cover pensions to widows, orphans and other dependants, has been dealt with as a separate provision and contributions are required from the officers.

From an investigation recently made into a number of 1937 Act funds, it appears that an average contribution of 14.3 *per cent.* of salaries and wages is necessary to maintain the solvency of the funds. A new entrant contributes 6 *per cent.* only (5 *per cent.* in the case of servants) and the local authority contributes an equivalent amount). There is, accordingly, a contingent liability equivalent to 2.3 *per cent.* of salaries and 4.3 *per cent.* of wages to be made good by the local authority under the provisions of s. 22 of the 1937 Act. A request for additional benefits might, therefore, be met with a counter-requirement, that employees' contributions should be substantially increased.

The benefits under the National Health Service Scheme, which are stated to be actuarially equivalent to those provided under the 1937 Act scheme attract a contribution of 6 *per cent.* from officers and 5 *per cent.* from servants, and of 8 *per cent.* and 6 *per cent.* for officers and servants respectively from the local authority. It may also be of interest to note that the cost of teachers' pensions has been estimated at 15 *per cent.* of salaries, of which the teachers pay 5 *per cent.* and the cost of police and firemen's pensions have been estimated to be equivalent to 25 *per cent.* of pay of which the police and firemen pay 5 *per cent.* No contributions are made by civil servants towards the cost of their pensions (except for the recently made widows, etc., pensions scheme) but it would be interesting to know the percentage of pay to which the benefits they receive are actuarially equivalent.

CIVIL DEFENCE

[CONTRIBUTED]

Joint working between local authorities often seems more difficult than it used to be. No doubt but that the uncertainties of foreshadowed re-organization tend to make authorities hesitate to approach others. Rather do they strive for self sufficiency. To some extent post war legislation has taken away some services, *e.g.*, hospitals, which especially required joint arrangements. But however this may be, the new civil defence service will require local authorities to look outward as well as inward, for the service is a national one, and, so far as it relies on local government, can only be the product of local government as a whole.

Youngest in tradition, the Civil Defence Corps will share with the armed forces the task of adapting itself to ever advancing technical development. The experience of Hamburg and of Nagasaki and Hiroshima indicate that local authorities must work even more closely together in the preparation of plans than was envisaged at any time during the last war, not to mention what would be required of them in operations. Large cities must co-operate in building up a service based upon places beyond their boundaries, perhaps under the immediate control of the county council. The need for London can be well imagined. Evacuation may not be the come and go arrangement which fortunately served the purpose well enough in the last war. Local government's part in the country's defence in the future and its part in the preparations which events dictate must be taken in hand now, is no mere carrying on from where local authorities left off last time.

The Civil Defence Act, 1948, in keeping with now familiar practice, is a widely phrased measure. The former Acts, the Civil Defence Act, 1937 and 1939, may be revived, amended,

repealed or extended under the new Act. So broadly enabling is the 1948 Act, that even the Minister to make regulations may be designated by Order in Council. By s. 9 (2), the Minister is the Secretary of State unless another Minister is designated. The Minister of Health has, by S.I. 1949 No. 1438, been designated the Minister for some purposes. The new Act is also unusual in that the functions of local government under it depend in the main upon regulations under s. 2 of the Act, which may not only bestow services upon local authorities, but also, in keeping with the peculiar character of the service, require local authorities in the exercise of their functions to comply with directions to be given by the designated Minister.

In a service like civil defence, which is essentially an emergency service, little complaint if any can be made about government by decree. The regulations under the Act (subject in the making to the affirmative resolution procedure of the Statutory Instruments Act, 1946) are in themselves to a substantial extent enabling measures. In war time secrecy is appropriate and all must be entrusted to the Government (hence the now familiar war time coalition of parties in the House), but in the formulative days, albeit all emergency of some degree, the ordinary parliamentary safeguards remain available, and directions might well feature in parliamentary questions. That is good, but in the interests of State security the Government might not always be able to answer.

Among the regulations made are the Civil Defence (General) Regulations, 1949, made by the Home Secretary in the exercise of powers conferred upon the Secretary of State by s. 9 (2) of the Act. These regulations provide the machinery for the exercise of the functions conferred upon local authorities by regulations under s. 2. Regulation 1 of the General Regulations provides for the setting up a of civil defence committee (up to one third of the members of which may be persons not members of the appointing authority—a most apt provision in a matter where even local politics will not have normal scope). The regulation also enables joint committees to be set up by two or more authorities ; another apt provision bearing in mind that under reg. 3 a county council may decide to (or be directed to) delegate to more than one county district council. Regulation 1 also permits an authority to authorize a committee or joint committee (including one set up under any other enactment, *e.g.*, the Local Government Act, 1933), to exercise its civil defence functions as agent, subject to the familiar exclusion of power to levy or issue a precept for a rate or to borrow money, The same " normal " check on expenditure is carried through reg. 2, by which any existing provision that would otherwise require a civil defence matter to be delegated to or to stand referred to or to be considered by or otherwise dealt with by a particular committee, is satisfied if it be referred to the civil defence committee, except any statutory requirement for reference to the finance committee.

Regulation 3 authorizes, with the consent of the designated Minister, delegation to any other local or police authority, and the Minister can direct such delegation. Regulation 4 gives the Minister wide powers of action where " he is satisfied that any local authority has failed or refused to discharge " any of its civil defence functions.

Regulation 5 provides that a local authority may for the purpose of any of their civil defence functions, after consultation with any other relevant authority, (*i.e.*, the authority, if any, which would, but for this regulation, have had the power to permit or agree to the thing proposed, etc., or the function of restraining the thing to be done) and with the consent of the designated Minister do things in contravention of or without compliance with any statutory provision which is not contained in the Civil Defence Act or in regulations made under it, regulating or restricting the carrying out of building, engineering, or other operations in, on, or over land, or the making of any material change in the use of buildings or land. This is obviously an emergency regulation. At first sight it appears to enable a county district council, *e.g.*, to do more than the widest delegation under the Town and Country Planning Act, 1947, could permit, but the necessity for the consent of the Minister governs the regulation. Even so, only an emergency would support powers for statutory provision to be so over-ridden on a ministerial direction. Regulation 6 is constitutionally in the same class. It provides, in effect, that restrictions in any other enactment on the employment of persons, or the provision, construction or maintenance of any premises or equipment shall not apply where the designated Minister imposes other limits. The two remaining articles call for no special comment.

The distribution of functions to local government recognizes the larger authorities as the major authorities in the pattern now familiar in other services. The idea of the scheme making authority seems to be dropped. Whether this is an indication that " schemes " generally are regarded as of less importance than hitherto or that in civil defence the service can be better organized otherwise is conjectural, but signs are not wanting that formal schemes can be too formal, especially when revisions are needed from time to time. The fire service " model " scheme, to take one example, has been recently revised and now provides for some detail, which before has been set out in schemes, to be made by arrangements made by the authority with the approval of the Secretary of State, the formal scheme containing an authority for that to be done.

Among the regulations conferring functions so far made is S.I. 1949 No. 1433, which declares that " it shall be a function of every county council, every county borough council, the common council of the city of London, every metropolitan borough council and the council of the Isles of Scilly " (as well as five named county district councils) to organize a division of the Civil Defence Corps, and, in doing so, to comply with ministerial directions. Regulation 5 provides for a division to be organized by more than one council in a proper case. This " fourth arm " of the defence services will generally be under the Home Secretary (himself acting, to the same extent as the other service ministers, under the Minister of Defence). The Secretary of State has made other regulations, including S.I. 1949 No. 2121 (the Public Protection Regulations) empowering local authorities to collect intelligence on the results of hostile attack (a most important function bearing in mind that attack may come with fire, explosion, atomic fission, chemicals or bacteria), to control and co-ordinate action following attack, to rescue persons from buildings and debris, to take anti-gas measures and to instruct and advise the public, all functions for which the Civil Defence Corps will be recruited and trained.

A number of regulations have been made by the Minister of Health dealing with " normal " services which require expansion for civil defence, being services for which the Minister is ordinarily responsible as Minister. These include water supply, sewerage, burial and welfare, the latter including evacuation and care of the homeless.

All these civil defence services for which local government has become responsible, the raising, etc., of the divisions of the Civil Defence Corps and the making of plans in related directions may put upon local government the biggest task in co-operated effort in its history. What may happen in any operation of the plans is obviously conjectural, for a war once begun may lead to situations not envisaged before-hand. Moreover, the test may not come in this generation, though the likelihood is sufficiently obvious to make plans most necessary. If the deterioration in international relationships

continues, the plans will very likely be tried out in armed conflict, and local authorities required to work in extremities of difficulty, when, incidentally, local government boundaries will be almost as irrelevant to defenders as attackers.

A few static services will continue working in their localities, *e.g.*, sewerage. Other services such as evacuation may need large operational areas, perhaps changing from time to time as the ebb and flow of war involves one part of the country at one time and others at another. Individual local authorities may temporarily lose their identity in varying combinations, or under higher control. The importance of plans for adequate services on sound and uniform bases is obvious. Too many pains over preparations cannot be taken, either by the central government or local government.

No problem is likely to arise through inactivity of local authorities. The difficulty, if any, is more likely to be in ways and means. The report of the Man Power Committee on delegation will be the first authoritative pronouncement on that subject since the passing of the Town and Country Planning Act, 1947, which brought many authorities into contact in day to day functions, the county district council acting to an extent for the county council. If the Government does intend to reorganize local government, the desirability of doing so quickly is obvious when civil defence is considered. The present organization has much to commend it, and better that it should be confirmed now than that change should come in the midst of civil defence. To some critics, to revert to planning, the present delegation provisions would be better repealed, and so also the provisions for the county district councils to appoint members on county committees, so that each authority is left to discharge its own more clearly defined functions itself. But in civil defence such measures might be vital, and they must, for the sake of civil defence, be not suffered but developed and strengthened.

The inevitability of entrusting to local government the task of preparing the civil population for active civil defence work follows from the local government system in this country. Certain specific services might be organized by other bodies, and will, *e.g.*, the hospital service, but where the object is to secure the training of all the people so far as age and condition permit for any emergency, an all embracing local authority commanding respect and authority in its area is needed, and this argument is not vitiated in the two tier system—agency should see to that. But what local authorities must have before them is that they are training not only for action by their own people in their own area. The normal philosophy must be adjusted to meet the case. To a degree the plans must be localized, but only to that degree. There will be only one Corps, uniformly trained and equipped and mobile to a great extent. In action, orders from the centre (or from Regional Controllers) will leave little scope for the normal role of local government authorities.

The local representative, and the local official, will desert their normal role much as Parliament foregoes its normal role in circumstances of coalition. Fortunately the British possess the ability to put politics in its proper place—an accomplishment shared by too few other countries, more's the pity—and our philosophy of popular government through parliamentary institutions embraces the occasion for absolute governmental power. So, too, would local government survive unimpaired a period of apparent eclipse, in the carrying out of a function for which local authorities individually are the statutory authorities.

"EPHESUS."

MISCELLANEOUS INFORMATION

ROAD ACCIDENTS, APRIL, 1950

The return of the number of persons reported to have died or to have been injured, as a result of road accidents in Great Britain during the month of April, 1950, is as follows :—

Classification of persons	Total		
	Died	Injured	
		Seriously	Slightly
Pedestrians :—			
(i) under fifteen	57	453	1,325
(ii) fifteen and over	108	555	1,398
Pedal cyclists :—			
(i) under fifteen	10	175	627
(ii) fifteen and over	41	618	1,956
Motor cyclists	66	631	1,206
Drivers	22	278	943
Passengers (sidecar or pillion) :—			
(i) under fifteen	—	4	34
(ii) fifteen and over	16	164	376
Passengers (other vehicles) :—			
(i) under fifteen	4	65	330
(ii) fifteen and over	25	515	2,003
All persons 1950	349	3,458	10,198
1949	340	3,333	10,263

DUTCH VISIT TO OXFORD

Among the visitors to Oxford this summer were a party of Dutch civil officers who attended the annual summer school of the National Association of Local Government Officers held at Oriel College from July 8 to July 15.

The Dutch visit was a reciprocal gesture for the very successful school organized on behalf of Nalgo by the Dutch Institute of Administrative Sciences in Holland last year.

The school was opened by Lord Kennet, president of the Association of Municipal Corporations, and the lectures this year were divided into two series, one on the general theme of "The Place of Local Government in Democratic Society," and the other of a more descriptive nature, particularly intended for the Dutch participants.

REHABILITATION OF THE DISABLED

Western Union Policy

A committee of Government experts from the five Brussels Treaty countries—Belgium, France, Luxembourg, the Netherlands and the United Kingdom—has for some time past been studying the question of the rehabilitation of the disabled to enable them to take their places as productive members of the community.

This Five-Power Committee has now drawn up a recommendation to the governments, the general principle of which is that the governments should recognize that it is their duty to take the necessary steps to ensure, by all means within their power, the employment of disabled persons, whatever the cause or origin of their infirmity, by encouraging both their medical and industrial rehabilitation, their vocational training and their resettlement.

During the discussions, the various systems already adopted in each country in the field of rehabilitation and resettlement were examined and, for the guidance of governments, the following principles were drawn up :—

1. It is of the utmost importance to combine, as early as possible, medical treatment and the various stages of functional and professional rehabilitation in order to minimize or eliminate disablement.

2. By "rehabilitation" is meant all measures designed to prepare a disabled person mentally and physically to enter or re-enter the employment field and, as far as possible, to take a normal place in the community.

3. It is essential to determine, on the basis of medical evidence and in association with other experts, the extent of the mental and

physical faculties which remain, in order to be able to decide on the range of occupations most suitable to the disabled person.

4. Personnel taking part in the various stages of rehabilitation should be carefully chosen and should undergo a special training.

5. Vocational training should be provided for the disabled where it appears that such facilities offer the best means of satisfactory resettlement.

6. Resettlement is a continuous process, therefore a permanent service of advice should be available for all disabled persons to help them find new employment, should this be necessary.

7. Consideration should be given to follow-up methods having the purpose of ensuring that the employment continues to be mentally, physically and industrially satisfactory to the individual concerned and, where this is not so, of suggesting a change of occupation.

8. It is important to ensure that a wide field of employment is open to the disabled person, including the possibility of making it compulsory for certain firms to engage a minimum specified percentage of such persons. To facilitate this operation, there might, in particular, be a system of registration of disabled persons qualified to benefit from measures of rehabilitation and resettlement.

9. While maintaining the principle that the best form of resettlement consists in a disabled person working alongside the able-bodied, provision should be made in certain severe cases for employment in sheltered or special conditions.

10. It is desirable that a central co-ordinating body be set up in each country for all questions concerning the rehabilitation of the disabled.

THE LAW SOCIETY QUESTIONS FOR THE FINAL EXAMINATION

[*By courtesy of the Law Society, we are able to reproduce the following questions set in the June, 1950, Final Examination, held on Wednesday, June 21, 1950.—Ed., J.P. & L.G.R.*]

LOCAL GOVERNMENT LAW AND PRACTICE (2.30 to 5.30 *p.m.*)

61. What classes of persons are entitled to be registered as local government electors for a local government electoral area? (Do not include in your answer any reference to service qualifications.)

62. What remedies are available to a borough council to compel payment of rates levied by the council, where such rates are payable by (*a*) an individual, and (*b*) a limited company? You can assume that the rateable hereditament is situated outside London.

63. You are asked to advise an urban district council as to the incidence of the cost of repair of underground pipes conveying sewage from six houses, separately owned and occupied, to a public sewer which is admittedly repairable at the expense of the district council. You find that the sewage pipes from all the houses discharge into a single collecting tank constructed under privately owned land and that a single pipe running under privately owned land then conveys the contents of the tank to the public sewer aforesaid. The houses served by this system of drainage and the drainage works were constructed prior to 1936. On what points would you require information before advising?

64. (*a*) By what means can an order of *mandamus* be enforced if the party against whom the order is made refuses to comply therewith? (*b*) If an order of *mandamus* is made against a local authority, and the local authority refuses to comply therewith, can any action be taken against individual members of the authority as a means of enforcing compliance with the order?

65. You are consulted by a client who has been asked to stand for election as a member of a county council. Your client, who is a shopkeeper in a small way of business, doubts whether he could afford to attend meetings of the council and committees which are held at the county town, some twenty miles from your client's home, and he asks you what financial assistance he may expect to receive from the county council. Advise him in general terms, without going into administrative details.

66. The Fire Services Act, 1947, requires the making of "management schemes" and of "establishment schemes." State in general terms the matters with which such schemes must deal, and indicate by what classes of local authority the schemes are made. Is the approval of such schemes by any, and if so, which Minister required?

67. A police constable of a county police force, when driving a police patrol car on duty, negligently knocked down and injured a pedestrian. Consider whether the standing joint committee for the county is liable in an action for damages brought by the pedestrian.

68. A county borough council purchased land for a statutory purpose of the council after July 1, 1948. The council now proposes to develop the land for the purpose for which it was purchased, being a purpose for which planning permission is necessary. As the county borough council is the local planning authority under the Town and Country Planning Act, 1947, how should permission to develop be obtained?

69. The Housing Act, 1936, provides in s. 2 that on a letting of a "small dwelling-house" for human habitation a certain condition and a corresponding undertaking shall be implied. What is a "small dwelling-house" for this purpose, and what are the implied condition and the undertaking?

70. A rural district council proposes to establish a scavenging scheme for certain parishes in its district, and desires to entrust the management of the scheme to a separate statutory body in each parish. Only a few of the parishes concerned have parish councils. What administrative arrangements would you suggest?

71. Discuss briefly the principles that should be applied in deciding whether a failure to perform a statutory function imposed on a local authority would justify an action for damages by a person injured by such failure.

72. You are asked to advise a rural district council in the following circumstances:—The council has offered to purchase from a landowner a parcel of agricultural land containing one quarter of an acre, for the purpose of erecting a water-tower in connexion with the council's water undertaking which is established under the Public Health Act, 1936, as amended by the Water Acts, 1945 and 1948. The situation of the land is such that it will be much more economical to erect the water-tower there, instead of on any alternative site. The landowner, knowing this, says that although the value of the land for agricultural purposes is only some £25, he will not sell to the council for less than £100 in view of the special value of the land to the council. You have ascertained that planning permission can be obtained, and that no objection will be made by the Minister of Agriculture to the diversion of the land to purposes other than agriculture. What advice would you give to the rural district council as to the purchase of the site, and as to the price asked by the landowner?

THE LAW AND PRACTICE OF MAGISTRATES' COURTS, INCLUDING INDICTABLE AND SUMMARY OFFENCES, MATRIMONIAL JURISDICTION, BASTARDY, JUVENILE COURTS, TREATMENT OF OFFENDERS, CIVIL JURISDICTION, COLLECTING OFFICERS' DUTIES, THE ISSUE OF PROCESS, EVIDENCE IN CRIMINAL CASES, AND LICENSING (2.30 to 5.30 *p.m.*)

61. "A person cannot be convicted of a crime unless it is shown not only that he had committed a forbidden act or default but also that a wrongful intention or blameworthy condition of mind can be imputed to him." Give, quite shortly, your observations on the foregoing statement.

62. An order has been made by a court of summary jurisdiction under the Guardianship of Infants Act, 1886, whereby H is ordered to pay his wife the sum of 20*s.* per week for the maintenance of their child. H is £10 in arrear under the order and the wife asks you how the order can be enforced. Advise her.

63. At a general annual licensing meeting the licensee of the "Pig and Whistle" public house applies for the renewal of his full on-licence. X jumps up at the meeting and says: "I object to the renewal of this licence for the 'Pig and Whistle.'" What steps should the licensing justices take?

64. You are acting as clerk to the justices for the X Division in Somerset. A motorist is convicted by your justices and they fine him £10, disqualify him for twelve months and order particulars of the disqualification to be endorsed on his driving licence. The motorist resides in Surrey, but his driving licence was issued by the Kent County Council. What action must you take?

65. F, a furniture dealer, is charged with not complying with the restrictive provisions of an order made under the Defence (General) Regulations, in that he made a cupboard with too many drawers. It was proved that a civil servant visited F's factory and there inspected the cupboard which failed to comply with the order. No other evidence is given. No notice to produce the cupboard has been given by the prosecutor and it is not produced in court. F's solicitor contends that the best available evidence has not been given as the cupboard has not been produced in court and that the prosecutor has failed to discharge the onus of proof which is upon him. How should the clerk advise the justices?

66. In what circumstances and under what conditions may a court of summary jurisdiction, when sentencing a person just convicted by it, take into consideration "outstanding offences" alleged against the accused?

67. A defendant is charged before justices upon three informations alleging different summary offences. The cases are heard separately and, upon the first, the justices decide to convict, but they wish to hear and determine the other two cases before they decide the penalty they shall inflict in respect of the first case. You are acting as clerk to the justices and are asked to advise as to the procedure to be adopted. What advice would you give?

68. On September 5, 1949, a wife, W, who was living apart from her husband, H, obtained a maintenance order against H on the ground of desertion and he was ordered to pay £1 a week for his wife

and 10s. a week for their child. No payments were made under the order. After some months W returned to H's house with their child and was allowed to live in part of the house. W consults you and states that she and H are still occupying separate parts of the house. W wishes to apply to the justices to enforce the order of maintenance. Advise W as to the legal position.

69. Has a magistrate adjudicating upon a case any right to ask an accused person any questions?

70. Is a master (other than a corporation) criminally liable for the acts of his servant?

71. What is the object of the examination when a person is charged before examining justices with an offence which can only be dealt with on indictment?

72. H, a married man, went to Burma in 1947 and has been there ever since on military duties. In December, 1949, he received a letter from his wife in which she stated that she was pregnant of a child of which he was not the father. In a letter dated February 17, 1950, H wrote to a friend in England stating "I find it is much easier to forgive than to forget, but as I know it will be best for the children I will try and live it down and go on as if it had not happened . . ." H did not write to or communicate with his wife. The wife makes an application to the justices under the Bastardy Laws Amendment Act, 1872, against the putative father. Is the wife a "single woman" within the meaning of that Act?

REVIEWS

Stephen's Commentaries on the Laws of England. Twenty-first Edition. London: Butterworth & Co. (Publishers) Ltd. Price £6 15s.

There is perhaps no law book quite so widely known as this amongst English legal practitioners, since it was for many years the textbook for the intermediate examination for articled clerks in the solicitor's branch of the profession. It is a good many years since the last previous complete edition. Volume I of a twentieth edition appeared in 1938, and was a valuable handbook to constitutional law, but the remaining volumes of that edition were not proceeded with owing to the outbreak of war. The present twenty-first edition was put in hand after the war, and solicitors who were themselves brought up upon the eighteenth or earlier editions will be glad to see that it has reverted to the style in which they were prepared. It aims at setting out so much of the law as the articled clerk must imbibe for his intermediate examination in a manner which can be picked up at the stage of education which he will most often have reached: that is to say, at about the age when, if he was not to become a solicitor as early as possible, he would be going on to the university. For the articled clerk who has already passed through a university but has not taken a law degree, the work will be equally useful, since when he comes first to law he is much in the position of his younger fellow student. The learned editor in chief and his colleagues have begun with a brief outline of the history and sources of the law, and gone on in the remainder of vol. I to the law of property. It must be a matter of opinion which topic is best introduced to the young student at the outset. To many of our own readers, since they work in public offices, public law may seem the natural foundation, but for a young man in the office of a solicitor in private practice it will, we suppose, most often happen that the papers to which he is first introduced will be those affecting a private client, and very possibly will be a conveyance or contract dealing with real property. After property law, which covers the latter part of vol. I, the student proceeds in vol. II to contract and tort and, under the head of associations of persons, finds so much as he will be capable of learning at first about companies, trade unions, and so forth. Volume III brings him to civil procedure, followed by constitutional and administrative law. Under the general heading of "procedure," the student will find explained the organization of the legal profession, with proceedings in bankruptcy and at arbitrations, as well as in the courts. The second half of this volume comprises central and local government, with a surprising amount of information upon detailed matters with which the student may soon be brought in contact. Chapter 25, on "the constitutional position of the subject," deals with a variety of matters from *habeas corpus* to town and country planning, and contains a useful comparison, necessarily brief, with foreign legal systems. In vol. IV we pass to criminal law, with an introductory part on criminal liability generally, and with treatment of the most ordinary crimes, followed by evidence and criminal procedure. No summary of the contents of this work can, however, give more than a bare indication of the amount of information to be found. For our own solicitor readers detailed description is unnecessary, since they will have been brought up on the work. We have tested it at many points, and are satisfied that it is, as it professes to be, fully up to date, as regards the four bound volumes, as at the beginning of 1949. Moreover, it has been possible while the work was passing through the press to bring it still further up to date by various references to changes in the law during that year and a supplement has been supplied with the complete edition, which brings the law up to date at January 1, 1950. It seems almost invidious, where there is so much instruction given in an easy and so readable a form, to select particular chapters for mention, but we have been struck with the understandable quality, from the student's point of view, of (for example) the chapter on the Settled Land Acts and related legislation in vol. I, and that which we have already mentioned on the constitutional position of the subject in vol. III. Volume III also gives a treatment of the budget in chapter 17, and of rating and valuation in chapter 21, which deserve special notice as an introduction to those topics for the student. In vol. IV dealing with the criminal law the learned editors had to cope not merely with the inherent difficulty of making a student understand some of the artificial distinctions which the law still draws, but also with the passing through Parliament of far-reaching amending legislation in 1948 and 1949. To this volume there is an appendix, enumerating by way of example the main indictable offences with the maximum punishment for each, and in the same volume will be found the table of cases for the whole work. If at first sight this looks small, by comparison with that in an ordinary law book, it is to be remembered that the learned editor and his colleagues have set out to tell the student what in their opinion the law is, rather than to overwhelm him with authorities. After he has passed his intermediate examination, he will, it is to be hoped, be compelled by his teachers to form the habit of going for himself to the law reports and statutes, but until that stage is reached it is as well for him to acquire an over-all general knowledge of the whole body of the law. This he will obtain from *Stephen's Commentaries* and we do not know any other work which competes with it for this purpose, where English law is concerned. The present edition will, we are convinced, be found not to fall in any way behind the standard of accomplishment which generations of articled clerks and their preceptors have discovered in earlier editions.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

PENALTY FOR NON-APPEARANCE

I am much interested in the paragraph headed " Penalty for Non-Appearance " which appears in your issue of June 17.

I quite appreciate that a court should not punish a man for not appearing ; as you say, if they feel he should appear, they can adjourn it.

On the other hand, it does seem to me that the man who takes the trouble to appear at court and perhaps loses a day or half a day's wages should be treated rather differently to the man who just ignores his summons and does nothing. Take the case of two friends who are both charged with the offence of riding a bicycle without a light ; one says : I am not going to attend ; I will have to plead guilty and they can do what they like, I am not going to waste a day or a half a day's wages by attending court. The other says : I must plead guilty but I do feel that as I have been summoned I should attend out of respect to the court.

Now to fine both these men exactly the same will, I think, make the man who has taken the trouble to attend the court (and perhaps lose his wages) feel somewhat grieved.

I do therefore feel that some difference should be made between the man who takes the trouble to attend court and the man who just ignores the summons. Of course, the matter could, as you suggest, be got over not by fining the man who does not attend more than the other, but by fining the man who does attend less than the other ; but surely that is really a mere quibble, is it not ?

Then of course there is the case of the man who writes pleading guilty and asking for the case to be taken in his absence, (*a*) and giving good reason for not attending or (*b*) giving no reason. How is he to be treated ? Should he be treated in the same way as though he had attended ; or should he come in between and have rather less allowed off his fine than if he had actually attended ?

I shall be much interested to know what your other readers think about the matter.

Yours truly,
W. T. WILSON.

Traill, Castleman-Smith & Wilson,
Solicitors,
Blandford, Dorset.

[We suggest that there is a real difference between increasing a penalty above what is the normal amount for the offence in question, and reducing it because of expenses to which a defendant is put in attending. In these days is it reasonable to expect all defendants to appear in person, regardless of distance and other relevant considerations, when there is no defence which they wish to put forward ?—*Ed., J.P. & L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

WHERE GOES PROBATION ?

It would be valuable to know the origin of your interesting and challenging article. We must freely admit that probation practice varies. One of its most important features is that it should vary. Its flexibility is its great virtue, and the variations occur not only from place to place but from case to case. As probation develops along with other methods of treating offenders and other social services, the knowledge and experience of all these must be called on and will influence the probation system.

Nevertheless, it would be a sad day if ever vision, purpose and strength of will ceased to have first place in the work of the probation officer. Attention to social factors without a parallel attention to the outlook and will of the offender would be regarded by probation officers as a waste of time and indeed a weakening of the offender's sense of responsibility. But as a change of conditions may be useless without a change of heart, so may a change of heart be of little value if there is no change of conditions. It was said of the Quakers that where others took the Gospel they first took bread and the Gospel followed. The modern probation officer acts in this light. The material and social needs cannot be forgotten, but it is hard to believe that any probation officer regards outward help as more than part of the means to an end, and never the end in itself.

The end remains—to advise, assist and befriend—and whatever may be the modern embellishments of that duty, the basis is that which has been handed on and continues to be handed on throughout this service from the original missionaries. If your suggestion is true, that new rather than " old fashioned " qualifications are likely to predominate in the selection of probation officers, no one will regret it more than the probation officers themselves. One of their criticisms of the training scheme is its lack of ethical direction ; and Home Office refresher courses with an ethical basis have been welcomed enthusiastically by probation officers, while showing the recognition by the Home Office of an existing need.

Yours truly,
FRANK DAWTRY,
General Secretary.

National Association of Probation Officers,
2 Hobart Place,
Eaton Square,
S.W.1.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

CONTINUITY OF READERSHIP

With reference to the correspondence upon this matter you may be interested to know that I have a set of the *Justice of the Peace* starting with volume 6 in 1842. Apart from the first five volumes the set is complete and I believe the set was started by H. B. White, Sons and Wallhead, solicitors of this town, members of which firm held the office of part-time clerk to the justices until my predecessor in office, who followed his father and grandfather before him, became a full-time clerk some few years ago. The existing volumes then became the property of the corporation and they have been added to ever since.

Yours faithfully,
A. JOHN BROUGHTON.
Clerk to the Justices.

Borough Magistrates' Clerk's Office,
17 Bold Street,
Warrington, Lancs.

THE WEEK IN PARLIAMENT

By Our Parliamentary Correspondent.

At question time in the Commons, Lt.-Col. M. Lipton (Brixton) asked the Attorney-General how far he proposed to carry out the recommendations of the Denning Committee Report relating to the welfare of children of divorced parents.

The Attorney-General, Sir Hartley Shawcross, replied that arrangements had now been made whereby the judges of the Divorce Division might refer to a probation officer for an inquiry and report as to the welfare of the children concerned in any application for custody or access heard in London. If those arrangements proved successful, it would no doubt be possible to consider their application to cases heard in the provinces.

LAW OF LIBEL

Brigadier Frank Medlicott (Norfolk Central) asked the Attorney-General when he would introduce legislation to carry into effect the recommendations of the Porter Committee on the law of libel.

The Attorney-General replied that he was unable to say when it would be possible to introduce legislation to deal with the recommendations of that Committee.

Mr. T. Driberg (Maldon) asked the Attorney-General to expedite that legislation as much as he could and also to consider, in consultation with the Lord President of the Council, the setting up of the Press Council, since the two proposals were to some extent complementary.

The Attorney-General replied: "Certainly, Sir. The establishment of a Press Council which would ensure that the greater liberty and latitude to the Press which would follow on the proposed amendment to the law of libel was not allowed to develop into licence, for which there was no redress, would greatly assist those who, like myself, would like to see the law of libel amended in favour of the Press."

Asked by Mr. J. Harrison (Nottingham East) whether there were any special difficulties in introducing legislation to meet the recommendations of the Committee, the Attorney-General replied that it was to some extent a complicated and, in some ways, controversial matter.

INTESTACIES COMMITTEE.

Mr. Donal Kaberry (Leeds North-West) asked the Attorney-General whether he would introduce legislation to revise the proportion of benefits derived on intestacy under the provisions of the Administration of Estates Act, 1925, having regard to the change in values since that date.

The Attorney-General replied that the Lord Chancellor had decided to set up a committee to examine the matter. The committee would have the following terms of reference:

1. To consider the rights under s. 46 of the Administration of Estates Act, 1925, of a surviving spouse in the residuary estate of an intestate.
2. To consider whether, and if so to what extent and in what manner, the provisions of the Inheritance (Family Provision) Act, 1938, ought to be made applicable to intestacies.
3. To report whether any, and if so what, alteration in the law was desirable.

The Attorney-General added that he was not yet in a position to announce the composition of the committee.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Thursday, July 6

PUBLIC UTILITIES STREET WORKS BILL, read 3a.

FOREIGN COMPENSATION BILL, read 3a.

HOUSE OF COMMONS

Wednesday, July 5

LONDON GOVERNMENT BILL, read 1a.

PERSONALIA

APPOINTMENTS

Mr. G. S. Ashworth, legal assistant to the borough of Royal Leamington Spa, has been appointed assistant solicitor to the borough of Darwen. Mr. Ashworth served his articles with Mr. J. N. Stothert, town clerk of Leamington Spa, and has held a previous appointment with the corporation of Hereford.

Mr. Philip Allen has been appointed a prison commissioner under the Prison Act, 1877, in succession to Dr. J. C. W. Methven who has retired. Mr. Allen, who is thirty-eight years of age, has been appointed by the Home Secretary deputy chairman of the prison commission. He entered the Home Office in 1934 and has for some years been an assistant secretary in the department.

Mr. Geoffrey Wood Appleyard, senior probation officer for Leeds, has been appointed principal probation officer for that city. Mr. Appleyard is thirty-three years of age and entered the probation service as a Home Office trainee in 1938. He was appointed part-time probation officer at Old Street Metropolitan Court and relieved at Stamford House juvenile court. He later served at Lambeth juvenile court and Bournemouth magistrates' court. During the war he served in the army and was demobilized with the rank of major.

Mr. Richard Henry Peddie, a probation officer in the Lancashire No. 5 combined probation area, has been appointed a probation officer for the city of Leeds. Mr. Peddie is thirty-nine.

OBITUARY

Major-General Eric Hugh O'Donnell died at Roehampton on July 4 at the age of fifty-seven. He was called to the Bar by the Inner Temple in 1925, and after retiring from the army in 1926 he practised on the South-East Circuit and London until 1939. In 1928 he was appointed chairman of the courts of referees under the National Unemployment Insurance Acts. In 1946 he was appointed a Master of the Supreme Court, King's Bench Division.

Mr. Charles John Ritchie, C.B.E., J.P., one of His Majesty's lieutenants for the City of London and formerly deputy commandant-in-chief of the Metropolitan Special Constabulary, died in London on July 6, at the age of seventy-nine.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption of Children—*Illegitimate child of married woman—Consent of mother's husband—Evidence and notices.*

Mr. and Mrs. A wish to adopt an infant and desire their identity to be kept confidential. The infant was obtained through an adoption society. The mother of the infant is Mrs. X, who is a married woman who, as far as is known, is not judicially separated from her husband. The birth certificate shows the child to be illegitimate, there being no one registered as the father. Mrs. X does not know the whereabouts of her husband, and, in fact, does not wish her husband to become aware of the birth of this child. There is no affiliation order or agreement with the putative father. I would be grateful for your opinion on the following queries which arise :—

(1) A child born during lawful wedlock is presumed to be legitimate until the contrary is proved. The husband of Mrs. X is therefore by presumption the father of the child and until it has been proved in a court of law that he is not the father, or it is intended to prove that he is not the father when the adoption application is heard, he must be made a respondent to the adoption proceedings. Is this contention correct? In an explanatory memorandum of the Adoption of Children Act, 1949, and the Rules thereunder, dated January, 1950, and jointly made by the Home Office and Lord Chancellor's Office, at the end of para. 14 it advises that the consent of the mother's husband is not necessary in such a case, which seems to suggest that the mere production of the birth certificate is sufficient to bastardize the infant.

(2) If my contention in (1) is correct, one method of getting over the difficulty is for the applicants to produce evidence that the husband of Mrs. X is not the father. They have no such evidence except by calling Mrs. X as a witness. As however they desire their identity to be kept confidential, how can this difficulty be overcome? There is a procedure for hearing the evidence of Mrs. X on a separate day if she withdrew her consent. Would it be in order to use this or a similar procedure for Mrs. X to come to court on a separate day for the purpose of proving her husband is not the father?

(3) Will you please answer this question (3) independently of what your answers to (1) and (2) may be, as the point comes up very frequently. Let us suppose that the infant was registered as legitimate and it is the legitimate child of Mrs. X and her husband. The whereabouts of Mrs. X's husband are unknown. In the application form Mr. and Mrs. A ask the court to dispense with the consent of Mrs. X's husband on the ground that he cannot be found and the court have a discretionary power to dispense with his consent. Rule 9 provides that a notice of application shall be sent to every person whose consent is required but there does not appear to be any provision for the court dispensing with the service of the notice. Rule 31 prescribes the method of service. Is it sufficient service if the guardian *ad litem* serve it on some person at his last known place of abode, even although the guardian *ad litem* reports that the notice has not come to the knowledge of the respondent?

(4) If your answer to (3) is "no," or if there is no one at his last known place of abode who will accept service of the notice, is it correct to say that, because the Act and Rules do not give the court discretionary power to dispense with the service of the notice, the justices cannot make an adoption order? If this argument is correct, is there any method of overcoming the difficulty or should such cases be referred to the High Court?

(5) It might be argued that if the applicants are asking the court to dispense with consent, there is no need to serve the notice of application on the respondent as he is not a person whose consent is required. I do not think this argument can be correct as it would mean that whenever the court was asked to dispense with consent on any of the grounds mentioned in s. 3, an order could be made without the "respondent" ever becoming aware of it or having an opportunity of opposing the application. Do you agree?

S. "BURNCAR."

Answer.

(1) In our opinion, the husband should be made a respondent, because we do not think the bare fact that the father's name is not entered in the birth certificate is sufficient to rebut this strong presumption of legitimacy. There must be proof of non-access by the husband, and this is not now so difficult as formerly.

(2) The Rules and forms certainly make it difficult to deal satisfactorily with this situation while complying with the Rules, but as the mother's evidence appears indispensable we think arrangements should be made for her to attend and give the necessary evidence without meeting the applicants. Alternatively, the child might be treated as legitimate and the husband treated as if he were the father, and his consent dispensed with if the court is satisfied that he really cannot be found. We prefer the former course, because the facts of the case are brought out.

(3) We consider such service is sufficient. The law does not require impossibilities to be performed, and if every effort has been made to effect service, in compliance with the Rule, we think the consent can be dispensed with.' Otherwise it would often mean that a respondent's consent could not be dispensed with in cases where the law has said that it should be.

(4) As stated in (3), we think the justices may act.

(5) We entirely agree. The notice should be sent to or left at the last known place of abode in the hope that it may reach the respondent.

2.—Assault—*Infant prosecutor—Whether he must proceed by next friend.*

I shall be much obliged if you can inform me whether there is any reason why an infant who has been assaulted should not himself make a complaint under the Offences against the Person Act, 1861, s. 42.

It seems to me that this involves election of civil or criminal proceedings and in the former he can only proceed by next friend. If some person should make the complaint on his behalf that presumably should be stated in the complaint; and if the infant gives evidence proving the authority of the complainant that should suffice. I have been wondering if an infant has the power to give such authority other than in the normal method of appointing a next friend.

I have been unable to find any authority other than 17 *Halsbury* 702.

SAU.

Answer.

So far as we are aware, there is no decision precisely in point, but it is certainly common practice to allow infants to take proceedings in magistrates courts without next friend. We have never heard of objection being taken. We think that an infant may take criminal proceedings, *see* an article 86 J.P.N. 39, and we also think the course suggested by our learned correspondent would be quite proper.

3.—Criminal Law—*Breaking and entering, etc.—Entry by means of a key.*

A, B and C are employed by a firm of merchants. In an inner office is a safe. This office is approached from a passageway which leads from the street. Both the office and the street doors leading to the passage are locked by "yale" type locks. A set of keys to both doors and the safe is in the possession of both A and B. One week-end B and C left both office door, street door and safe locked. On returning on Monday morning it is found on opening the safe that money has been stolen. There is no sign of any forcible entry and it is clear that whoever took the money used a duplicate set of keys to open the office door and safe door and possibly the street door as well.

Is this housebreaking or larceny?

SETIC.

Answer.

In our opinion, entry by means of a key, with intent to commit felony is breaking and entering. *See Archbold's Criminal Pleading*, 32nd edition, p. 650.

4.—Education—*School attendance proceedings—Whether to be heard in juvenile or adult court.*

By the Juvenile Courts (Assignment) Rules, 1938, S.R. & O. 1938 No. 230/L.4, the hearing of any application under ss. 44, 45 or 54 of the Education Act, 1921, was assigned to a juvenile court.

I cannot find any further rules whereby the hearing of a complaint under ss. 39 and 40 of the Education Act, 1944, for the enforcement of an attendance order has been assigned to a juvenile court on the making of that Act, and shall be glad if you will advise me whether such proceedings should still be taken in a juvenile court or whether such court no longer has any jurisdiction in such matters, and in consequence the proceedings must be taken in an adult court.

SETT.

Answer.

The proceedings against the parent for offences must be taken in the adult court, not having been assigned to the juvenile court. It should be noted that school attendance orders are now made by the Education Authority under s. 37 of the Education Act, 1944, and not by a court. Juvenile court proceedings may follow a prosecution of a parent, *see* s. 40.

5.—Husband and Wife—*Maintenance order—Wife in hospital under National Health Service Act, 1946—Enforcement of order.*

A, is the wife of B, some years ago obtained a maintenance order against B. A is now a tubercular patient in a sanatorium, and B has failed to make payment under the order over the past three months. A is now desirous of enforcing payment of the order and arrears. I understand that under the National Insurance Act, a husband paying full contribution is not liable for the maintenance of his wife whilst she is undergoing hospital treatment. In these circumstances is it possible for A to enforce payment of the maintenance order?

S.O.L. & F.

Answer.

It is true that A is maintained at the public expense, and that may be a good ground upon which B can apply for variation or revocation of the order, but in our opinion it is open to A to seek to enforce payment so long as the order stands. The justices have a discretion to enforce, or to remit arrears, Money Payments (Justices Procedure) Act, 1935, s. 8 (2).

It is perhaps worthwhile to point out that payment of some portion at all events of the wife's allowance might provide her with extra comforts or little luxuries. It is probably true that A is maintained entirely at the public expense.

6.—Landlord and Tenant—*Furnished Houses (Rent Control) Act, 1946—Lessor a patient in a mental hospital.*

A is the owner of a dwelling-house and some time ago let accommodation therein to a number of lessees at rents which included payments for furniture and services. Two of the lessees propose to apply to the local rent tribunal for a consideration of the rents they are paying. Since the contracts were entered into, A has been admitted to a mental hospital and is likely to remain there for some time. There has been no official appointment of a receiver or agent, and the property is now being managed by A's brother who collects the rents and pays the outgoings, etc. If the information required under s. 2 (1) of the Act is supplied by A's brother, acting as unofficial agent, can the tribunal deal with the lessee's applications?

Asor.

Answer.

Regulation 7 of the Furnished Houses (Rent Control) Regulations, 1946, allows a party to appear before the tribunal "by any . . . representative," but we doubt whether this helps the tribunal in the case before us. By s. 2 (2) of the Act itself, the tribunal must give each party an opportunity of being heard or in his option of submitting representations in writing. If a party is *non compos mentis*, and there is nobody empowered to act for him, the subsection cannot be satisfied. A patient in a mental hospital is not necessarily unable to attend to his legal business, and we think the tribunal ought to make such inquiries as they can about his true condition. If they are satisfied that he is not able to appear, or to instruct a representative to do so, or to make written representations, then the safest course seems to be to dismiss the reference. Note the difference between s. 2 of the Act of 1946 and s. 1 of the Landlord and Tenant (Rent Control) Act, 1949, by which the tribunal is not required to give either party an opportunity of being heard: *R. v. Brighton Rent Tribunal, ex parte Marine Parade Estates, Ltd.* [1950] 1 All E.R. 946.

7.—National Assistance Act, 1948—*Persons needing care and attention—Authority to remove.*

I should be glad of your assistance on a point which has arisen as to who is the appropriate authority to exercise powers of removal of certain persons in need of care and attention under s. 47 of the National Assistance Act, 1948. By subs. (12) the appropriate authorities to institute proceedings outside London are councils of county boroughs and county districts. Proceedings have been taken before my justices under s. 47 by the local urban district council, but it appears to me that the appropriate authority in this case is the county council, as the home to which the person is proposed to be removed under subs. (3) was before the Act administered by the county council, and the ambulance services referred to in subs. (10) are also administered by the county council.

Ald.

Answer.

The appropriate authority is the council of the borough or district. The point which you have in mind is probably that to which the proviso to subs. (3) of the section is directed.

8.—Probation—*Reports of probation officers—Whether to be given on oath—Criminal Justice Act, 1948, s. 43.*

Must probation officers reports, under s. 43 of the Criminal Justice Act, 1948, be given on oath from the witness box? Under this section would it be proper for the reports to be read to the court rather than giving them as evidence?

Stol.

Answer.

The section requires a supply of a copy of a written report to the defendant, but says nothing about its being read aloud or given on oath. It is not, we think, necessary that a probation officer reading his report to the court should take an oath, but practice differs in this respect: some courts prefer that he should do so, and there can be no possible objection. The officer is not giving evidence in the case, but making a report after the defendant has been found guilty, and a good deal of his statement may be hearsay and not evidence in the true sense. The officer will be able to ascertain what is desired by the court, and will no doubt act accordingly. The matter of the oath is one for the court rather than for him, and the court will also decide whether it is necessary to have the whole of a written report read aloud.

9.—Real Property.—*Mortgage securing prior debt—Mortgage registered as land charge—Limitation.*

In 1933 the indebtedness of A was dealt with by his executing a second mortgage in favour of the creditor. The second mortgage was registered under the Land Charges Act, 1925. The matter has not been active for a considerable time, and the debtor contends that the mortgage was paid off by him. The creditor contends that he can find no entry of payment from the debtor and that, in fact, it has not been paid, and the debtor is unable to produce any evidence to confirm his statement. The creditor now proposes to sue the debtor for the amount due under the mortgage, but the solicitors for the debtor claim that it is statute barred. The creditor contends that it cannot be statute barred having regard to the registration under the Land Charges Act, 1925, which is still operative. Will you please let us have your view on this point.

Amor.

Answer.

The phrase used above, "a considerable time," is not precise, but we assume the time has been long enough to bar the mortgagee's remedies.

If so, we do not think registration of the mortgage under the Land Charges Act, 1925, affects the matter. The purpose of that Act is to protect persons subsequently dealing with the land, not to preserve rights which otherwise would be lost under s. 18 of the Limitation Act, 1939.

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (*contd.*)

COUNTY BOROUGH OF WEST HAM

Children's Officer

APPLICATIONS are invited for the above appointment from persons with considerable experience of work with children, and preference will be given to applicants holding a Social Science Diploma.

Salary in accordance with Grade A.P.T. VIII (£685 × £25—£760 per annum) of the National Salary Scales, plus London weighting.

Full particulars of the duties, terms and conditions of appointment and form of application are obtainable from the undersigned and must be returned by noon on Monday, July 31, 1950.

H. A. EDWARDS,
Town Clerk.

Town Hall,
East Ham, E.6.
July, 1950.

DEVON COUNTY COUNCIL

Appointment of Junior Assistant Solicitor

APPLICATIONS are invited for this whole-time appointment at a salary not exceeding that within Grade A.P.T. VII of the National Joint Council's scale (£635 to £710 per annum).

Local government experience will be an advantage. The selected candidate will be required to pass a medical examination and contribute to the Council's superannuation scheme. The appointment will be terminable by three months' notice on either side.

Applications, stating present salary, age, and details of experience, together with the names of two persons to whom reference may be made, should be forwarded to me by not later than July 29, 1950.

Canvassing in any form will disqualify.

H. A. DAVIS,
Clerk of the Council.

The Castle,
Exeter.
July 7, 1950.

THE URBAN DISTRICT COUNCIL OF PENGE

Committee Clerk

APPLICATIONS are invited for the appointment of Committee Clerk in the Clerk's Department, at a salary within Grades I and II of the A.P.T. Division of the National Joint Council's Scales, plus the appropriate London weighting allowance.

Applicants must have had experience in attending meetings of committees, and drafting minutes and reports; some experience of conveyancing would also be an added advantage.

The appointment will be subject to the provisions of the Local Government Superannuation Act, 1937, to the National Scheme of Conditions of Service, and to the successful applicant passing a medical examination.

Applications, stating age and experience, together with copies of two testimonials, must be forwarded to the undersigned by July 29, 1950.

Canvassing, directly or indirectly, will disqualify.

BERNARD FIELDING,
Clerk and Solicitor to the Council.

Town Hall,
Anerley Road, S.E.20.
July 6, 1950.

LINCOLNSHIRE COMBINED PROBATION AREA

Appointment of Male Probation Officer

APPLICATIONS are invited for the appointment of a full-time male probation officer for a district at present comprising the boroughs of Grantham and Stamford and the petty sessional divisions of Bourne and Spitalgate.

The appointment and salary will be subject to the provisions of the Probation Rules.

The selected candidate will be required to pass a medical examination and will act under the supervision and direction of the Principal Probation Officer.

Applications should reach the undersigned not later than July 29, 1950.

H. COPLAND,
Secretary.

County Offices,
Lincoln.

MYNYDDISLWYN URBAN DISTRICT COUNCIL

Appointment of Clerk of the Council and Chief Executive Officer

APPLICATIONS are invited for the above appointment from legally qualified persons having experience of local government law and administration.

Salary scale: £850 rising by £50 per annum to £1,000.

Returning Officer's fees for local elections and Electoral Register fees to be retained. All other fees to be paid into the Council's funds.

The person appointed will be required to devote his whole time to the statutory and other duties of the office and to such other duties as may be assigned to him by the Council from time to time.

The appointment is subject to the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination. The appointment will be terminable by three months' notice on either side.

Applications, stating age, present and previous appointments and salary, experience, and qualifications, etc., and accompanied by copies of three recent testimonials, should reach the undersigned not later than Wednesday, July 19, 1950.

The applicant's relationship with any member or senior official of the Council must be disclosed and canvassing either directly or indirectly will disqualify.

The Council will be prepared to consider the provision of housing accommodation for the successful candidate.

J. H. MORRIS,
Clerk of the Council.

Council Offices,
Pontllanfraith, Mon.
July 4, 1950.

URBAN DISTRICT COUNCIL OF HAVANT AND WATERLOO

Appointment of Clerk of Council

APPLICATIONS are invited for the above appointment from persons having extensive experience in local government law and administration.

The terms of appointment and salary will be in accordance with the scheme prepared by the Joint Negotiating Committee for District Council Clerks commencing at £1,350 per annum and rising by four annual increments of £50 to £1,550 per annum. Returning Officer's Fees for local Elections and Electoral Registration Fees to be retained. All other fees to be paid into the Council's funds.

The person appointed will be required to devote his whole time to the statutory and other duties of the office and to such other duties as may be assigned to him by the Council from time to time.

The appointment is subject to the Local Government Superannuation Acts, to the passing of a medical examination, and determinable by three months' notice in writing on either side.

The successful applicant will be required to reside within the Urban District.

Applications on the prescribed form obtainable from the undersigned endorsed "Clerk of the Council" must be delivered at my office not later than July 29, 1950.

Canvassing in any form will be a disqualification.

ALBERT E. MADGWICK,
Clerk of the Council.

Town Hall,
Havant.
July 12, 1950.

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